

1 ALAN H. BLANKENHEIMER (Bar No.
2 218713)
3 alan.blankenheimer@hellerehrman.com
4 LAURA E. UNDERWOOD-MUSCHAMP
5 (Bar No. 228717)
6 laura.muschamp@hellerehrman.com
7 JO DALE CAROTHERS (Bar No. 228703)
8 jodale.carothers@hellerehrman.com
9 CHRISTOPHER K. EPPICH (Bar No.
10 228025)
11 christopher.eppich@hellerehrman.com
12 HELLER EHRMAN LLP
13 4350 La Jolla Village Drive, 7th Floor
14 San Diego, CA 92122-1246
15 Telephone: +1 (858) 450-8400
16 Facsimile: +1 (858) 450-8499

17 Attorneys for Plaintiff
18 MAXIM INTEGRATED PRODUCTS, INC.

CHARLES M. KAGAY (Bar No. 73377)
cmk@slksf.com
SPEIGEL LIAO & KAGAY, LLP
388 Market Street, Suite 900
San Francisco, CA 94111
Telephone: +1 (415) 956-5959
Facsimile: +1 (415) 362-1431

DOUGLAS A. CAWLEY (Admitted *Pro*
Hac Vice)
dcawley@mckoolsmith.com
ROBERT M. MANLEY (Admitted *Pro*
Hac Vice)
rmanley@mckoolsmith.com
MCKOOL SMITH PC
300 Crescent Court, Suite 1200
Dallas, TX 75201
Telephone: +1 (214) 978-4000
Facsimile: +1 (214) 978-4044

Attorneys for Defendant
FREESCALE SEMICONDUCTOR, INC.

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 MAXIM INTEGRATED PRODUCTS, INC.,
18 Plaintiff,

19 v.

20 FREESCALE SEMICONDUCTOR, INC.,
21 Defendant.

22 AND RELATED CROSS-ACTIONS.

Case No.: C 08-00979-MHP

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

23
24
25
26
27
28
Heller
Ehrman LLP

1 IT IS HEREBY ORDERED THAT, Plaintiff Maxim Integrated Products, Inc.
2 (“Maxim”) and Defendant Freescale Semiconductor, Inc. (“Freescale”) are to be bound
3 by the following Protective Order for the protection of confidential information,
4 documents, and other things produced, served or otherwise provided in this action by the
5 parties or by third parties:¹

6 **A. Designated Material.**

7 1. Information, materials, deposition transcripts, and/or discovery responses
8 may be designated as “CONFIDENTIAL” or “CONFIDENTIAL – OUTSIDE
9 ATTORNEYS ONLY” under this Protective Order by any party to this action
10 (“Designating Party”) or any third party making such production or disclosure hereunder.
11 All such information and material and all information or material derived there from
12 constitutes “Designated Material.” Unless and until otherwise ordered by the Court or
13 agreed to in writing by the party producing or disclosing Designated Material, Designated
14 Material shall not be used or disclosed by the party receiving Designated Material except
15 as provided under the terms of this Protective Order. (For purposes of this Protective
16 Order, “disclose” means to show, furnish, describe, summarize, or provide the original or
17 a copy of the referenced Designated Material.) Notwithstanding the provisions contained
18 within this Protective Order, the parties agree to subsequently negotiate in good faith
19 additional protective order provisions for the protection of source code should the
20 production thereof become necessary.

21 2. Subject to the limitations set forth in this Protective Order, a designation of
22 “CONFIDENTIAL” shall mean that the producing or disclosing party, whether a party to
23 this action or a non-party producing or disclosing voluntarily or pursuant to a subpoena or
24 court order in this action, considers the material or information to constitute or to contain
25 its trade secrets or other confidential research, development, technical, financial, or
26 commercial information, whether embodied in physical objects, documents, or the factual

27 _____
28 ¹ For purposes of the protections afforded under this Protective Order, Freescale shall be entitled to mark Motorola, Inc. information and material in Freescale’s possession with any designation set forth under this Protective Order.

1 knowledge of persons; and that has been so designated by the producing or disclosing
2 party.

3 3. A designation of “CONFIDENTIAL – OUTSIDE ATTORNEYS ONLY”
4 is reserved for “CONFIDENTIAL” information and material that constitutes proprietary
5 or commercially sensitive competitive information of the producing or disclosing party or
6 third party, including, without limitation, patent licenses or documents relating to patent
7 licenses, including CONFIDENTIAL information and material obtained from a non-party
8 pursuant to a current Nondisclosure Agreement, design documents, strategic plans,
9 source code listing (and descriptions of their operation), object code listings (and
10 descriptions of their operation), integrated circuit diagrams, settlement agreements or
11 settlement communications, marketing plans and forecasts, customer lists, and any
12 pending unpublished patent applications, domestic or foreign, the disclosure of which is
13 likely to cause harm to the competitive position of the producing or disclosing party or
14 third party.

15 **B. Access to “CONFIDENTIAL” AND “CONFIDENTIAL—OUTSIDE**
16 **ATTORNEYS ONLY” (Other than by Outside Consultants).**

17 1. A receiving party can only disclose another party’s or third party’s
18 “CONFIDENTIAL” material and information to:

- 19 (a) Persons who appear on the face of Designated Material marked
20 “CONFIDENTIAL” as an author, addressee or recipient thereof, or
21 persons who have been shown through testimony or other evidence
22 to have been an author, addressee or recipient thereof;
- 23 (b) Two in-house counsel and one business employee (and their
24 respective administrative staff), whose assistance is needed by
25 Outside Counsel for the purposes of this litigation, designated in
26 writing to the other party and who agree to be bound by the terms of
27 this Protective Order by signing Exhibit A.
- 28 (c) “Outside Counsel” (which means and is defined as counsel of

1 record, including the partners, associates, agents and employees of
2 counsel of record, except for agents or employees who have been
3 retained or employed by Outside Counsel as experts or consultants)
4 for the parties to this action to the extent reasonably necessary to
5 render professional services in this action. Unless otherwise
6 expressly provided subsequently through stipulation or court order,
7 Outside Counsel shall include only the law firms of Spiegel, Liao &
8 Kagay, LLP and McKool Smith, P.C. on behalf of Freescale, and
9 Heller Ehrman LLP on behalf of Maxim.

10 (d) Non-party experts and consultants retained or employed by Outside
11 Counsel to assist in the preparation of the case (“Outside
12 Consultant(s)”), to the extent reasonably necessary to render
13 professional services in this action, subject to the disclosure
14 requirements of Section C.

15 (e) Vendors with whom Outside Counsel of record for the parties to this
16 litigation have contracted for purely clerical functions, such as data
17 processing vendors, copy vendors, court reporters or videographers,
18 and graphic or design services vendors retained for the purposes of
19 preparing demonstrative or other exhibits for deposition, trial or
20 other court proceedings in this action, who agree to be bound by the
21 terms of this Protective Order by signing Exhibit A.

22 (f) The current and/or former employees of the designating party
23 provided that, in the case of a former employee, the document was
24 created prior to that former employee’s termination or resignation
25 from the designating party.

26 (g) Mock jurors and jury consultants who have been engaged by the
27 parties and/or the consultants in preparation for trial. For any jury
28 research, an appropriate screening process must be used to assure

1 that the jury consultant(s) and mock jurors chosen for any mock jury
 2 presentation are not current or former officers, directors, employees
 3 or consultants of any party or any direct competitors of any party.
 4 Each jury consultant and/or mock juror must agree in writing to be
 5 bound by this Order by signing and undertaking the form of Exhibit
 6 A to this Order.

7 (h) The Court, jury, court personnel and similar personnel.

8 2. A receiving party can only disclose another party's or third party's
 9 "CONFIDENTIAL – OUTSIDE ATTORNEYS ONLY" material and information to:

- 10 (a) Persons who appear on the face of Designated Material marked
 11 "CONFIDENTIAL – OUTSIDE ATTORNEYS ONLY" as an
 12 author, addressee or recipient thereof, or persons who have been
 13 shown through testimony or other evidence to have been an author,
 14 addressee or recipient thereof;
- 15 (b) "Outside Counsel" (which means and is defined as counsel of
 16 record, including the partners, associates, agents and employees of
 17 counsel of record, except for agents or employees who have been
 18 retained or employed by Outside Counsel as experts or consultants)
 19 for the parties to this action to the extent reasonably necessary to
 20 render professional services in this action. Unless otherwise
 21 expressly provided subsequently through stipulation or court order,
 22 Outside Counsel shall include only the law firms of Spiegel, Liao &
 23 Kagay, LLP and McKool Smith, P.C. on behalf of Freescale, and
 24 Heller Ehrman LLP on behalf of Maxim.
- 25 (c) Non-party experts and consultants retained or employed by Outside
 26 Counsel to assist in the preparation of the case ("Outside
 27 Consultant(s)"), to the extent reasonably necessary to render
 28 professional services in this action, subject to the disclosure

1 requirements of Section C.

2 (d) Vendors with whom Outside Counsel of record for the parties to this
3 litigation have contracted for purely clerical functions, such as data
4 processing vendors, copy vendors, court reporters or videographers,
5 and graphic or design services vendors retained for the purposes of
6 preparing demonstrative or other exhibits for deposition, trial or
7 other court proceedings in this action, who agree to be bound by the
8 terms of this Protective Order by signing Exhibit A.

9 (e) The current and/or former employees of the designating party
10 provided that, in the case of a former employee, the document was
11 created prior to that former employee's termination or resignation
12 from the designating party.

13 (f) Mock jurors and jury consultants who have been engaged by the
14 parties and/or the consultants in preparation for trial. For any jury
15 research, an appropriate screening process must be used to assure
16 that the jury consultant(s) and mock jurors chosen for any mock jury
17 presentation are not current or former officers, directors, employees
18 or consultants of any party or any direct competitors of any party.
19 Each jury consultant and/or mock juror must agree in writing to be
20 bound by this Order by signing and undertaking the form of Exhibit
21 A to this Order.

22 (g) The Court, jury, court personnel and similar personnel.

23 3. Materials marked "CONFIDENTIAL – OUTSIDE ATTORNEYS ONLY"
24 can only be reviewed by or disclosed to the persons identified in Paragraphs (a) through
25 (g) of Section B.2 above, except that a person who reviews Designated Material marked
26 "CONFIDENTIAL – OUTSIDE ATTORNEYS ONLY" shall not prosecute or prepare
27 any patent application on behalf of any party to this action relating to the disclosed
28 technology from the time of receipt of such information through and including two (2)

1 years following the entry of a final non-appealable judgment or order or the complete
2 settlement of all claims against all parties in this action. In addition, any such person
3 shall not have any substantive involvement in the prosecution of any such application
4 filed, or claiming priority from any such application filed, prior to two (2) years
5 following the entry of a final non-appealable judgment or order or the complete
6 settlement of all claims against all parties in this action.

7 4. Each person to whom any Designated Material may be disclosed pursuant
8 to the provisions of this Protective Order shall, prior to the time such Designated
9 Materials is disclosed to him or her, be provided with a copy of this Protective Order and,
10 other than Outside Counsel and their staff, shall certify under penalty of perjury that he or
11 she has carefully read the Protective Order and fully understands its terms and agrees to
12 be bound thereby. This certificate shall be in the form attached as Exhibit A hereto.
13 Outside Counsel who makes any disclosure of another party's or third party's Designated
14 Material shall retain each original executed certificate and, upon written request, shall
15 provide copies of same to all Outside Counsel and the relevant designating third party at
16 the termination of this action, whether by final non-appealable judgment or order or the
17 complete settlement of all claims against all parties in this action.

18 5. All Designated Material and information covered by this Protective Order
19 shall be kept secure, and access shall be permitted only by those individuals indicated
20 under Section B, *supra*.

21 6. All counsel for the parties who have access to information or material
22 designated as Designated Material under this Protective order acknowledge they are
23 bound by this Order and submit to the jurisdiction of the Court for purposes of enforcing
24 this Order.

25 **C. Access By Outside Consultants.**

26 1. If any party wishes to disclose information or materials designated under
27 this Protective Order as "CONFIDENTIAL – OUTSIDE ATTORNEYS ONLY" or
28 "CONFIDENTIAL" to any Outside Consultant, it must, prior to disclosure of such

1 Designated Material, first identify that individual to Outside Counsel for the Designating
 2 Party, who shall have seven (7) business days from receipt of such notice to object in
 3 writing to such disclosure to any individual so identified. Failure to object within seven
 4 (7) business days to a person proposed shall be deemed approval, but shall not preclude a
 5 Designating Party from objecting to continued access of designated material by the
 6 person where facts suggesting that basis for objection are subsequently learned by the
 7 party or its counsel. Such identification shall include: (1) a copy of the executed
 8 Certification in the form attached as Exhibit A hereto; (2) a current curriculum vitae; and
 9 (3) a written notice providing (a) his/her business address, business title, and business or
 10 profession; (b) any previous or current professional relationship with any of the parties;
 11 (c) a statement that he/she does not anticipate becoming an employee of any of the parties
 12 in the near future; (d) a list of other cases in which the he/she has testified (at deposition,
 13 hearing or trial) within the past five (5) years, which shall identify the parties and their
 14 respective law firms, his/her client and a general statement of the work he/she performed;
 15 and, (e) a list of all companies with which he/she has consulted or by which he/she has
 16 been employed in the field within the past five (5) years, which shall identify his/her
 17 client and a general statement of the work he/she performed. If at any time after an
 18 Outside Consultant executes the Certification in the form attached as Exhibit A and
 19 during the pendency of this action the Outside Consultant becomes employed by a
 20 competitor of the current parties to this action, or is retained to render services to any
 21 person or entity the Outside Consultant understands to be a competitor of the current
 22 parties to this action, the Outside Consultant shall promptly inform Outside Counsel, as
 23 defined in Section B.1.(c). The parties shall attempt to resolve any objections informally,
 24 and approval by the Designating Party shall not be unreasonably withheld. If the
 25 objections cannot be resolved, the objecting party may move, within seven (7) business
 26 days following its objection, for a protective order preventing disclosure of
 27 “CONFIDENTIAL – OUTSIDE ATTORNEYS ONLY” or “CONFIDENTIAL”
 28 materials to the individual. In the event that such a motion is made, the party seeking to

1 prohibit disclosure shall bear the burden of proving that the disclosure is inappropriate.
2 Prior to the resolution of any such objection, an opposing party's Designated Material
3 shall not be disclosed to person(s) so designated. Without modifying any obligations
4 under the Federal Rules of Civil Procedure, the parties shall not have any obligation
5 under this Protective Order to identify which materials are provided to Outside
6 Consultants. Neither party seeking to have a consultant shall disclose any information
7 designated as Designated Material to the proposed consultant until: (1) after objections to
8 the proposed disclosure have been resolved by the parties in writing or by court order, or
9 (2) if no objections have been made, during the seven (7) business day period to object.
10 Outside Counsel who makes any disclosure of Designated Material shall also retain each
11 original executed certificate and, upon written request, shall circulate copies to all
12 Outside Counsel and the relevant designating third party at the termination of this action,
13 whether by final non-appealable judgment or order or the complete settlement of all
14 claims against all parties in this action.

15 **D. Use Of Designated Materials.**

16 1. Nothing in this Protective Order shall limit any Designating Party's use of
17 its own documents and information, nor shall it prevent the Designating Party from
18 disclosing its own confidential information or documents to any person. Such disclosure
19 shall not affect any designations made pursuant to the terms of this Protective Order, so
20 long as the disclosure is made in a manner that is reasonably calculated to maintain the
21 confidentiality of the information.

22 **E. Procedure For Designating Material.**

23 1. Documents, materials and discovery responses, in whole or in part, may be
24 designated as "CONFIDENTIAL – OUTSIDE ATTORNEYS ONLY" or
25 "CONFIDENTIAL" as follows:

26 2. The producing party shall designate materials by placing the legend
27 "CONFIDENTIAL – OUTSIDE ATTORNEYS ONLY" or "CONFIDENTIAL" on each
28 page of the materials prior to its production or notifying all parties in writing of such

1 designation(s) at the time of its production or disclosure.

2 3. When a Designating Party wishes to designate as “CONFIDENTIAL –
3 OUTSIDE ATTORNEYS ONLY” or “CONFIDENTIAL” materials produced or
4 disclosed by a third party, such designation shall be made as follows:

5 (a) Within twenty-five (25) days from the date the party receives copies
6 of the material; and

7 (b) By written notice to all parties to this action identifying the material
8 to be designated with particularity (either by production numbers or
9 by providing other adequate identification of the specific material)
10 under this Protective Order.

11 4. Upon notice of designation, all persons receiving notice of the Designated
12 Material shall:

13 (a) Make no further disclosure of such Designated Material, except as
14 allowed in this Protective Order;

15 (b) Take reasonable steps to notify any persons known to have
16 possession of or access to such Designated Material of the effect of
17 such designation under this Protective Order; and

18 (c) Take reasonable steps to reclaim or prevent access to such
19 Designated Material in the possession or control of any person not
20 permitted to have access under the terms of this Protective Order.

21 **F. Procedure For Designating Depositions.**

22 1. Deposition transcripts or portions thereof may be designated as
23 “CONFIDENTIAL – OUTSIDE ATTORNEYS ONLY” or “CONFIDENTIAL” by a
24 party during deposition testimony or at the completion of said deposition, on the record,
25 taken in this action, in which case the portion of the transcript containing Designated
26 Material shall be identified in the transcript by the Court Reporter as “CONFIDENTIAL
27 – OUTSIDE ATTORNEYS ONLY” or “CONFIDENTIAL.” The designated testimony
28 shall be bound in a separate volume and marked by the reporter accordingly.

2. Where testimony is designated at a deposition as “CONFIDENTIAL – OUTSIDE ATTORNEYS ONLY” or “CONFIDENTIAL,” the Designating Party shall have the right to exclude, at those portions of the deposition, all persons not authorized by the terms of this Protective Order to receive such Designated Material.

3. Alternatively, any disclosing party may, within thirty (30) days after receiving a deposition transcript, designate pages of the transcript and/or its exhibits as Designated Material. If any disclosing party so designates such material, the parties or deponents shall provide written notice of such designation to all parties within the 30-day period. Designated Material within the deposition transcript or the exhibits thereto may be identified in writing or by underlining the relevant portions and marking such portions “CONFIDENTIAL – OUTSIDE ATTORNEYS ONLY” or “CONFIDENTIAL.” The designated testimony shall be bound in a separate volume and marked by the reporter accordingly. The parties may modify this procedure for any particular deposition or proceeding through agreement on the record at such deposition or proceeding or otherwise by written stipulation without further order of the Court. Deposition transcripts and exhibits shall be treated as “CONFIDENTIAL – OUTSIDE ATTORNEYS ONLY” during the 30-day period.

G. Copies.

1. All complete or partial copies of Designated Material shall also be deemed subject to the terms of this Protective Order. No copies of Designated Material shall be made by the receiving party except as is reasonably necessary for their own use, which copies shall contain the same legending, and which shall be subject to the same restrictions as the documents originally produced.

H. Court Procedures / Filing Under Seal.

1. Disclosure of Designated Material to Court Officials. Subject to the provisions of this section, Designated Material may be disclosed to the Court, Court officials or employees involved in this action (including court reporters, persons operating video recording equipment at depositions, and any special master or referee

1 appointed by the Court), the jury in this action, and any interpreters interpreting on behalf
2 of any party or deponent.

3 2. Filing Designated Material with the Court. Designated Material that is filed
4 with the Court for any purpose shall be filed in accordance with Civil L.R. 79-5 in a
5 sealed envelope and shall not be disclosed to the clerk or any other person except as
6 required by California local rules and administrative policies and procedures or upon
7 further order of this Court. Marked on the outside of the sealed envelope shall be the title
8 of the action, and identification of the document or thing within as required by Civil L.R.
9 3-4(a) and (b), and a statement prominently displaying the notation: "DOCUMENT
10 SUBMITTED UNDER SEAL".

11 3. Failure to File Under Seal. If any party fails to file Designated Material
12 under seal, the designating party or any party to this action may request that the Court
13 place the Designated Material under seal within twenty (20) days of the filing of said
14 Designated Material.

15 4. Use of Designated Materials in Open Court. Prior to a party using
16 Designated Material in open court, the party shall advise the Court of its intent to present
17 or quote from Designated Material and seek an order or ruling from the Court as to
18 proscriptions related thereto unless the parties reach agreement regarding same.

19 **I. Objections.**

20 1. A party may challenge the propriety of any designation under this
21 Protective Order at any time. A challenge may be made by serving on all other parties to
22 this action and any third party if the challenge is to its Designated Material, a captioned
23 notice of objection, which shall identify with particularity the Designated Material as to
24 which the designation is challenged and state the legal and factual grounds for each
25 challenge ("Notice of Objection").

26 2. On, but not before, the thirtieth (30th) day after service of a Notice of
27 Objection, the challenged material shall be deemed re-designated unless the designating
28 party has served a response to the Notice of Objection setting forth the legal and factual

1 grounds upon which the designating party bases its position that the material should
2 maintain the original designation or for designating the material otherwise. In the event
3 of a motion to change the designation, the material at issue may be submitted to the Court
4 for in camera inspection. It shall be the burden of the designating party under such
5 circumstances to establish that the information so designated is properly designated
6 “CONFIDENTIAL – OUTSIDE ATTORNEYS ONLY” or “CONFIDENTIAL” within
7 the meaning of this Protective Order. Upon the timely filing of such a motion, the
8 original designation shall remain effective until ten (10) days after service of notice of
9 entry of an order re-designating the material and during the pendency of any writ petition
10 filed within the ten-day period.

11 3. The parties shall meet and confer in good faith prior to the filing of any
12 motion under this section.

13 **J. Client Communication.**

14 1. Nothing in this Protective Order shall prevent or otherwise restrict counsel
15 from rendering advice to their clients and, in the course of rendering such advice, relying
16 upon the examination of Designated Material. In rendering such advice and otherwise
17 communicating with the client, however, counsel shall not make specific disclosure of
18 any Designated Material, except as permitted by this Protective Order.

19 **K. No Prejudice.**

20 1. This Protective Order shall not diminish any existing obligation or right
21 with respect to Designated Material, nor shall it prevent a disclosure to which the
22 Designating Party consents in writing before the disclosure takes place.

23 2. The failure to object to a designation of information as “CONFIDENTIAL
24 – OUTSIDE ATTORNEYS ONLY” or “CONFIDENTIAL” does not constitute an
25 admission that such information is not protected as a trade secret or that the information
26 is not protected by the laws of the United States and/or any State.

27 3. Unless all parties stipulate otherwise, evidence of the existence or
28 nonexistence of a designation under this Protective Order shall not be admissible for any

1 purpose during any proceeding on the merits of this action.

2 4. If any person required to produce documents inadvertently produces any
3 Designated Material without marking it with the appropriate legend, the producing party
4 may give written notice to the receiving party or parties, including appropriately stamped
5 copies of the Designated Material, that the document, things, or response is deemed
6 Designated Material and should be treated as such in accordance with the provisions of
7 this Protective Order.

8 5. Inspection or production of documents (including physical objects) shall
9 not constitute a waiver of the attorney-client privilege or work product immunity or any
10 other applicable privilege if, as soon as reasonably possible after the producing party
11 becomes aware of any inadvertent or unintentional disclosure, the producing party
12 designates any such documents as within the attorney-client privilege or work product
13 immunity or any other applicable privilege and requests return of those documents
14 (including physical objects) to the producing party. Upon request by the producing party,
15 the receiving party shall return all copies of inadvertently produced documents within
16 five (5) business days of the request. In no case will the return of requested documents
17 be delayed or refused by reason of a party's objection to said designation or by the filing
18 of a motion to compel, nor may such motion assert as a ground for production the fact of
19 the inadvertent production. Nothing herein shall prevent the receiving party from
20 challenging the propriety of the attorney-client privilege or work product immunity or
21 other applicable privilege designation by submitting a written challenge to the Court,
22 after returning all copies of the inadvertently-produced documents.

23 6. If any receiving party receives any information, material, and/or discovery
24 response which it reasonably believes was inadvertently produced without legending, it
25 shall promptly advise the producing party. The producing party shall have ten (10)
26 calendar days from its receipt of such notice by which to legend all or some of said
27 information, materials and/or discovery responses. During this ten (10) day period
28 counsel for said receiving party shall treat said information, materials and/or discovery

1 responses as if designated “CONFIDENTIAL – OUTSIDE ATTORNEYS ONLY.”

2 7. The restrictions as to use or dissemination of information or materials, set
3 forth in any of the preceding paragraphs, shall not apply as to:

- 4 (a) any information which at the time of the designation under this
5 Protective Order is generally available to the public;
6 (b) any information which after designation under this Protective Order
7 becomes available to the public through no act, or failure to act,
8 attributable to the receiving party or its counsel;
9 (c) any information which the receiving party, its counsel, or any
10 recipient of Designated Material under this Protective Order can
11 show as a matter of written record was already known to the
12 receiving party through means other than misappropriation as
13 defined by applicable law.

14 **L. Modification and Survival.**

15 1. Modification; Addition of Parties to this Stipulation.

- 16 (a) All parties reserve the right to seek modification of this Protective
17 Order at any time for good cause. The parties agree to meet and
18 confer prior to seeking to modify this protective order for any
19 reason. The restrictions imposed by this Protective Order may only
20 be modified or terminated by written stipulation of all parties or by
21 order of this Court.
22 (b) Additional parties and disclosing third parties subsequent to the
23 entry of this protective order may designate materials and
24 information hereunder and be bound by all the terms and conditions
25 stated herein by executing a written agreement thereto.

26 **M. No Contract.**

27 1. This stipulation is for the Court’s consideration and approval as an Order.
28 This Order shall not be construed to create a contract between the parties or between the

1 parties and their respective counsel.

2 **N. Retention of Jurisdiction by the Court.**

3 1. The Court retains jurisdiction to make such amendments, modifications,
4 and additions to this Protective Order as it may from time to time deem appropriate. This
5 Order shall be without prejudice to any party to this action or any disclosing third party to
6 bring before the Court at any time a question of whether any particular information is or
7 is not Designated Material; upon such hearing the person asserting the Designated
8 Material shall have the burden of establishing the same.

9 **O. Subpoenas.**

10 1. In the event any person or party having possession, custody or control of
11 any Designated Material or material such person or party deems Designated Material
12 under this Protective Order receives a subpoena or other process or order to produce such
13 information in another proceeding, such person or party shall promptly notify in writing
14 the attorneys of record of the party, non-party or person claiming such confidential
15 treatment of the documents sought by such subpoena or other process or order, shall
16 furnish those attorneys of record with a copy of said subpoena or other process or order,
17 and shall cooperate with respect to any procedure sought to be pursued by the party or
18 non-party whose interests may be affected (without waiver of the attorney-client
19 privilege, work product immunity or any other claim of privilege or immunity). The
20 party or non-party asserting the designation of material or information hereunder shall
21 have the burden of defending against such subpoena, process or order. The person or
22 party receiving the subpoena or other process or order shall be entitled to comply with it
23 except to the extent the party or non-party asserting confidential treatment is successful in
24 obtaining an order modifying or quashing it.

25 **P. Final Disposition.**

26 1. Within 90 days of the final disposition of the subject of this litigation,
27 whether it be pursuant to a final non-appealable judgment or order or the complete
28 settlement of all claims against all parties in this action, each party to this action and any

disclosing third party at its own option shall either:

- (a) request the return of its Designated Material, which shall be returned by the receiving party within 30 days of such request; or
 - (b) request the destruction of its Designated Material by the receiving party, which destruction shall occur within 30 days of such request.
- The party to this action or disclosing third party lodging or filing the Designated Material shall be responsible for retrieving such Designated Material from the Court following a final non-appealable judgment or order or the complete settlement of all claims against all parties in this action.

2. Notwithstanding the provisions for return or destruction of Designated Material, Outside Counsel may retain pleadings, attorney and consultant work product, one archival copy of deposition transcripts and exhibits containing Designated Material, Court exhibits and transcripts containing Designated Material, and documents and information included in submissions to the Court containing Designated Material, except that no Outside Counsel who prosecutes the receiving parties' patents shall maintain any material containing information designated as "CONFIDENTIAL – OUTSIDE ATTORNEYS ONLY."

Dated this 30th day of May, 2008.

s/ Alan H. Blankenheimer

Alan H. Blankenheimer
 Laura E. Underwood-Muschamp
 Jo Dale Carothers
 Christopher K. Eppich
 HELLER EHRMAN LLP

Attorneys for Plaintiff
 MAXIM INTEGRATED PRODUCTS, INC.

s/ Robert M. Manley (with consent)

Charles M. Kagay
 SPEIGEL LIAO & KAGAY, LLP

 Douglas A. Cawley
 Robert M. Manley
 MCKOOL SMITH PC

Attorneys for Defendant
 FREESCALE SEMICONDUCTOR, INC.

ORDER

Based upon the foregoing stipulation of the parties hereto, it is hereby ORDERED that information and documents produced, exchanged and otherwise disclosed in connection with this cause shall be subject to the provisions of the foregoing stipulation.

DATED this ____ day of _____, 20__.

Honorable Marilyn H. Patel
United States District Judge

EXHIBIT A

**CERTIFICATION CONCERNING
MATERIAL COVERED BY PROTECTIVE ORDER**

I, the undersigned, hereby certify that I have read the Protective Order entered in the Northern District of California in the case entitled *Maxim Integrated Products, Inc. v. Freescale Semiconductor, Inc.*, Case No. CV-08-00979-MHP (N.D. Cal.).

I understand the terms of the Protective Order. I agree to be bound by such terms and to submit to the personal jurisdiction of the District of California with respect to any proceeding related to the enforcement of this Protective Order, including any proceedings related to contempt of Court. I will not disclose Designated Material to anyone other than persons specially authorized by the Protective Order, and I agree to return all such materials which come into my possession to counsel from whom I received such materials.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Name or Individual: _____

Company or Firm Name: _____

Address: _____

Telephone No.: _____

Dated: _____ Signature: _____

CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2008, I electronically transmitted the attached document to the Clerk's Office using the CM/EFC System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

CHARLES M. KAGAY
cmk@slksf.com

DOUGLAS A. CAWLEY
dcawley@mckoolsmith.com

ROBERT M. MANLEY
rmanley@mckoolsmith.com

STEVEN POLLINGER
spollinger@mckoolsmith.com

s/ Kristina V. Grauer